
Costs Decision

Site visit made on 16 October 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th November 2017

Costs application in relation to Appeal Ref: APP/T0355/W/17/3179164 Ann Cherry Cottage, Howe Lane, Binfield, Bracknell RG42 5QS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Muir for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of planning permission for a replacement dwelling.
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Decision

1. The application for an award of costs is refused and no award of costs is made.

Reasons

2. The Planning Practice Guidance advises in its section on appeal costs that these may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. It gives examples of behaviour that may give rise to a substantive award of costs and includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, as well as acting contrary to, or not following, well-established case law.
 4. The gist of the appellant's claim is that the Council, in refusing to take his fallback position into account, prevented a development which should clearly have been permitted. The Council's statement responds that there was no reasonable possibility of the fallback scheme being built. It considers that the prospect of the fallback should be realistic and substantiated by evidence, which was not the case; it properly applied planning policy in making its determination.
 5. The Council did not refuse to take the fallback position into account. It rightly considered the fallback position as an other consideration. It also identified the positive benefits, in terms of openness and flood risk, of the appeal proposal over the fallback. However, the weight it gave the fallback position was limited.
 6. While I concluded that there was a greater than theoretical possibility that the fallback scheme would be completed, this was based more on the circumstances of the housing market and the regional pressure for housing than the evidence of the fallback scheme's commencement in 2015 and the likelihood of its completion. It was a matter of judgement whether the
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permitted development fallback would be sufficient to amount to very special circumstances. On the evidence, it was not unreasonable for the Council to conclude that it would not.

Conclusion

7. I conclude that unreasonable behaviour that justifies an award of costs has not been demonstrated and the application fails.

Patrick Whelan

INSPECTOR